82-11

No.

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IN THE

SUPREME COURT OF THE UNITED STATES

1982 TERM

MENNONITE BOARD OF MISSIONS..... Appellant

v.

RICHARD C. ADAMS ..... Appellee

APPEAL FROM THE INDIANA COURT OF APPEALS

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether the Indiana Tax Sale Statutes[1] specifically Ind. Code §6-1.1-24-3 and §6-1.1-24-4, are violative of the Due Process Clause of the Fourteenth Amendment of United States Constitution because those statutes only provide for notice by publication to a mortgagee of a pending tax sale.

Whether Ind. Code §6-1.1-25-6 is violative of the Due Process Clause of the Fourteenth Amendment of United States Constitution because no notice is given to a mortgagee prior to the expiration of the redemption period, which results in the State taking Appellant's property without notice or compensation.

Whether the Indiana Tax Sale Statutes are violative of Equal Protection of the Fourteenth Amendment of United States Constitution as applied because they provide for notice to "owners" by mail, and no similar requirement exists to notify mortgagees of record.

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[1]The Indiana Court of Appeals in this case referred to these statutes as the Tax Sale Statutes. See Appendix infra p. 17 fn 1.

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JURISDICTION AND OPINIONS BELOW

The opinion of the Indiana Court of Appeals, from which the Mennonite Board of Missions appeals appears in the Appendix hereto, pp. 17-29, infra, and is reported at Ind. App., 427 N.E.2d 686.

The judgment of the Indiana Court of Appeals, extinguishing Appellant's prior recorded mortgage and quieting title in favor of Appellee, was entered on October 29, 1981. Appellant filed a Petition for Rehearing before the Indiana Court of Appeals on November 18, 1981, which was denied on December 8, 1981. Appellant filed a Petition for Transfer to the Indiana Supreme Court on December 24, 1981, which was denied on April 13, 1982.

Appellant timely filed a Notice of Appeal to the United States Supreme Court with the Clerk of the Indiana Supreme Court and Court of Appeals on May 25, 1982. This same notice was sent to the Attorney General of the State of Indiana who was not a party to this action, but who may have an interest pursuant to 28 U.S.C. §2403(b).

This Appeal is being docketed in this Court within ninety (90) days from the denial of transfer by the Indiana Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2); §2101(c); §2104.

UNITED STATES CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment: (DUE PROCESS and EQUAL PROTECTION) §1:

> .....No state shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPLICABLE STATUTES

The most germane statutory provisions applicable to this appeal and contained in the Indiana Tax Sale Statutes are cited below in pertinent part:

Ind. Code §6-1.1-24-3

> (a) When real property is eligible for sale under this chapter, the county auditor shall post a copy of the notice required by Section 5 of this chapter at a public place of posting in the county courthouse at least three (3) weeks before the date of sale. In addition, the county auditor shall publish the notice required in Section 2 of this chapter, including the statement required in Section 2.1 of this chapter, in the manner prescribed in I.C. §6-1.1-22-4(b) once each week for three (3) consecutive weeks before the sale....

Ind. Code §6-1.1-24-4

> (a) In addition to the notice required by Section 3 of this chapter, the county auditor shall send a notice of the sale by certified mail to the owner or owners of the real property at their last address. The county auditor shall prepare the notice in the form prescribed by the State Board of Accounts, and he shall mail the notice at least twenty-one (21) days before the day of sale....

Ind. Code §6-1.1-25-6

> (a) The county auditor shall send a notice by certified mail to the former owner of real property not more than sixty (60) days nor less than thirty (30) days before a tax deed for the property is executed and delivered under this chapter. The county auditor shall prepare the notice on the form prescribed by the State Board of Accounts....

Ind. Code §6-1.1-25-4(d)

> (d) A tax deed executed under this section vests in the grantee an estate in fee simple absolute, free and clear of all liens and encumbrances except for the lien of the state for taxes and special assignments which accrue subsequent to the sale and which are not removed under subsection (c) of this section....

STATEMENT OF THE CASE

The Mennonite Board of Missions is a not for profit, charitable, eleemosynary, religious organization, with offices located for over fifty (50) years in Elkhart County, Indiana.

On February 7, 1973, Alfred M. Moore, (hereinafter Moore), executed a mortgage in favor of the Mennonite Board of Missions on property situated in Elkhart County, Indiana. On March 1, 1973, the mortgage was recorded in the Elkhart County Recorder's Office, and can be found at Mortgage Record 388, page 63, as provided under Indiana law.[2] Under the terms of the agreement, Moore was responsible for paying the property taxes. Moore made all of her monthly mortgage payments, but unknown to the Mennonite Board of Missions, she failed to pay the property taxes. As a result the property which was the subject of the mortgage was sold by the State to the Appellee, Richard C. Adams, (hereinafter Adams), at a tax sale on August 8, 1977.

Indiana law does not require the State to send personal notice to mortgagees prior to a tax sale, and the Mennonite Board of Missions did not receive any notice. Indiana law provides for only constructive notice of a tax sale to mortgagees by posting at the court house and publication in a newspaper.[3] Because of this statutory manner of notice, the Mennonite Board of Missions was unaware of

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[2] Ind. Code §32-1-2-16

[3] Ind. Code §6-1.1-24-3

this tax sale. Appellant concedes that Moore received notice by mail of the tax sale, but Moore never informed Appellant of the sale. Despite the tax sale, Moore continued to fully pay the mortgage each month. Appellant first learned that the property had been sold for taxes after the redemption period expired. Indiana law allows a mortgagee a two (2) year period from the time of a tax sale to pay the tax delinquency and retain his property interest, but does not contain any provisions to notify a mortgagee of the expiration of this redemption period.[4]

On November 1, 1979, Adams filed an action to quiet title to the property naming as defendants, the Appellant and Moore. Adams claimed that he owned the property in fee simple under Indiana law.[5] He sought to have the prior recorded mortgage of the Appellants declared null and void, and enjoin the Mennonite Board of Missions from asserting any claim against the title to the property.

Moore never responded to the complaint, and a default judgment was entered against her. She has no interest in this appeal, and is not a party to it.

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[4]Ind. Code §§6-1.1-25-1; 6-1.1-25-4; 6-1.1-25-6

[5]Indiana law provides that a tax deed grantee obtains his property free and clear of all prior liens and encumbrances. Ind. Code §6-1.1-25-4(d)

FEDERAL DUE PROCESS RAISED

The Appellant raised the United States Constitutional questions presented by this appeal before the trial court.

The trial court rejected the Mennonite Board of Missions' constitutional arguments, and granted summary judgment in favor of Adams. The trial court followed an Indiana decision, First Federal Savings & Loan v. Furnish,[6] in granting its summary judgment. The Furnish case held that notice by publication was sufficient notice to a mortgagee of a tax sale under Due Process.

Consistently through the exhaustion of the Indiana Appellate process, the Appellant has maintained that Furnish failed to properly apply the controlling precedent set by this Court in Mullane v. Central Hanover Bank & Trust Company.[7] The Indiana Court of Appeals in this case, adopted the reasoning and analysis in Furnish.

The Appellant also argued before the Indiana Courts that the Due Process Clause was violated because the Indiana Tax Sale Statutes provided no notice at all to a mortgagee before a tax deed is issued, resulting in the extinguishment of Appellant's property interest by the State without notice or any compensation.

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[6]Ind. App., 367 N.E. 2d 596, reproduced in the Appendix hereto pp. 29-43, infra.

[7](1950) 339 U.S. 306, 70 S.Ct. 65, 94 L.Ed. 2d 865

The Indiana Court of Appeals in this case held that as a matter of Due Process no notice was required to be given to the Mennonite Board of Missions after the tax sale and prior to the issuance of a tax deed relying upon Texaco[8], to support this proposition.

When the Mennonite Board of Missions petitioned the Indiana Supreme Court to review the decision by the Indiana Court of Appeals, Appellant submitted that the lower court erred in failing to apply the Mullane guidelines to mortgagees. Appellant further argued that the Indiana Court of Appeals' reliance on Texaco may have been misplaced because at that time this Court had the Texaco case under advisement. Appellant further submitted to the Indiana Supreme Court that the issues of pre-sale notice by publication and post-sale notice were not separate issues, and that the Texaco case was not singularly dispositive of the issues raised in this appeal. Finally Appellant argued that the Texaco case could be readily distinguished from this appeal. In Texaco, the Indiana statutes in question were self-executing while here the Tax Sale Statutes contemplate a series of affirmative acts by the State before they come into play.

The Indiana Supreme Court without an opinion denied transfer.

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[8]Short v. Texaco, (1980), Ind., 406 N.E. 2d 625 affirmed; 454 U.S.__, 102 S.Ct. 781

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The questions presented by this case are so substantial as to require plenary consideration, with briefs on the merits and oral argument for their resolution. This case presents this Court with one of its first opportunities to expound upon two cases[9] decided by this Court during this term. Each of those cases touched upon considerations of adequate notice under Due Process as previously enunciated by this Court in Mullane. Each of those cases was brought to the attention of the Indiana Supreme Court by Appellant, since both cases were under consideration by this Court while this case was still pending before Indiana's highest court.

This case involves an interpretation of adequate notice under Due Process in a tax sale situation. Appellant has asserted that the Mullane guidelines as applied to this case would render the Indiana Tax Sale Statutes unconstitutional.

Under Indiana law notice to a mortgagee a tax sale is accomplished by posting at the court house or publication in a newspaper. The Indiana Tax Sale Statutes provide for additional notice to an "owner" by certified mail. The Mennonite Board of Missions does not challenge the constitutionality of those statutes in regard to an "owner" of the property. All

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[9]Greene v. Lindsey, __U.S.__, 50 LW 4483, No. 81-341

Texaco v. Short, (1982), 454 U.S.__, 102 S.Ct. 781, appealed from Short v. Texaco, (1980), Ind., 406 N.E. 2d 625

that the Appellant contends is that a person with a significant property interest at stake, such as a mortgagee of record, should also receive at a minimum notice of a tax sale by mail. Notice by posting at the court house and publication in a newspaper is simply not reasonably calculated to inform an interested party of a tax sale, and is deficient notice based upon the guideline set out in Mullane and Greene.

Although both Texaco and Greene involved an interpretation of Mullane, the different facts and circumstances present in those cases could explain their seemingly dichotomous results. In Texaco this Court upheld Indiana's Mineral Lapse Act against a challenge by certain owners of mineral interests who claimed it violated Due Process because it contained no requirement to personally notify them that their property interests would automatically lapse after twenty years, unless certain actions were taken by them to protect their mineral rights. The majority of this Court stated that the Mineral Lapse Statute was a self executing statute of limitation. As a consequence, no form of personal notice to mineral owners was required by Due Process--other than the passage of the act itself.

That decision at first blush seemingly signalled a possible retreat from Mullane, until this Court's decision in Greene came down, but those two decisions still may cause some confusion for legal practioners unless this Court reconciles them. This case provides this Court with just that opportunity.

In Greene, this Court struck down the Kentucky Forcible Entry and Detainer Act holding that the posting of service of process by tacking it upon the door of a tenant's apartment was, under the facts and circumstances of that case, not reasonably calculated to apprise a tenant of an eviction action and hence was violative of Due Process. This Court citing Mullane suggested that service on a tenant by mail in such a situation was an inexpensive alternative manner of service, which would more likely result in the tenant receiving actual notice of the eviction proceedings.

This appeal falls within the purview of the Court's ruling in Greene. In fact, it is submitted that the defective notice in this case is even more egregious than the deficiency found in Greene. It is submitted that the Kentucky procedure of sending a sheriff to give personal notice to a tenant, and then posting notice on his apartment door if he is not home, is more reasonably calculated to apprise him of an eviction action than is the Indiana procedure in this case of giving only constructive notice to mortgagee of a tax sale by posting it at the courthouse and publishing it in a newspaper.

This case is not like the Texaco case. In Texaco the Indiana statutes were self executing while in this case the Indiana statutes in question require a series of affirmative acts by the State to trigger them. In the latter situation a mortgagee cannot be presumed to know, without receiving some actual notice, that a tax sale is pending or has occurred.

This case presents a significant and substantial question of constitutional law

relative to whether notice by publication constitutes adequate notice under federal Due Process to interested parties of a tax sale because every state in this country has in effect procedures for the sale of real property for delinquent taxes, similar in some respects to the statutes in effect in Indiana at the time this case arose.

The questions presented by this appeal are likely to recur as indicated by the numerous state courts of last resort which have already ruled upon the issue of whether notice of a tax sale by publication is adequate under Due Process. Those decisions are in conflict. The states of Arizona,[10] Florida,[11] Kansas,[12] Michigan,[13] Missouri[14] and New Jersey[15] have followed the controlling precedent set by this Court in Mullane, and have held

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[10] Laz v. Southwestern Land Company (1964), 97 Ariz. 69, 397 P. 2d 52

[11] Quay Development, Inc. v. Elegante Building Corporation (1981), Fla., 392 S. 2d 901

[12] Chapin v. Aylward (1970), 204 Kan. 448, 464 P. 2d 177

[13] Dow v. State (1976), 396 Mich., 192, 240 N.W. 2d 450

[14] Collector of Revenue of the City of St. Louis v. Parcels of Land Encumbered with Delinquent Tax Liens (1979), Mo., 585 S.W. 2d 486

[15] Township of Montville v. Block 69, Lot 10 (1977), 74 N.J. 1, 376 A. 2d 909

that notice by publication is insufficient as a matter of Due Process in a tax sale situation. The decisions in those states have held that Due Process requires notice reasonable calculated to inform an interested party that a tax sale would take place, and that at a minimum such notice must be by mail. Those decisions have found notice by publication insufficient as a matter of Due Process.

In fact the Arizona case decided the same constitutional issues raised in this appeal in favor of the Appellant extending the requirement that mortgagees with recorded interests be given notice of a tax sale at a minimum by mail, and the Michigan Supreme Court extended the Mullane guidelines to require notice of a tax sale to land contract vendees by mail.

However, California,[16] Oklahoma,[17] and Oregon[18] have approved notice by publication.

The question raised by the Mennonite Board of Missions in this case presents this Court with the opportunity to finally resolve the conflicts among the various states.

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[16] Chesney v. Gresham (1976), 64 Cal., App. 3d 120, cert denied 432 U.S. 907, 97 S.Ct. 2952, 53 L.Ed. 2d 1079

[17] Christie-Stewart, Inc. v. Paschall (1972) Okla., 502 P. 2d 1265; vacated (1973) 414 U.S. 100, 94 S.Ct. 313; upon remand (1974) Okla., 544 P. 2d 505

[18] Umatella County v. Porter (1973), Ore., 507 P. 2d 406

Another indication of how frequent the issues raised by this case appear is the fact that this Court has previously held unconstitutional a New York tax foreclosure scheme which merely provided for notice by publication of a tax sale to a known incompetent,[19] while on several other recent occasions, this Court has noted probable jurisdiction in tax sale cases involving similar questions of adequate notice under Due Process as raised here only to subsequently dismiss.[20] The reasons for dismissal in those cases are not present in this appeal providing this Court with the opportunity to squarely face the constitutional question of adequate notice under Due Process in tax sale situations.

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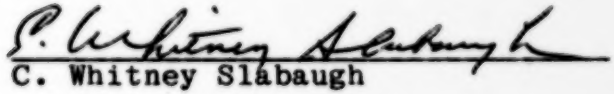
[19] Covey v. Town of Somers (1956) 351 U.S. 141.

[20] Paschall v. Christie-Stewart, Inc. (1973), 414 U.S. 100, 94 S.Ct. 313, 38 L.Ed. 2d 298; (1973) 414 U.S. 1059; Botens v. Aronauer (1973), 414 U.S. 1059, 94 S.Ct. 562, 38 L.Ed. 2d 464; Pearson v. Dodd (1977), 429 U.S. 396, 97 S.Ct. 581, 50 L.Ed. 2d 574; Chesney v. Gresham, supra.

For these foregoing reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,



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STATE OF INDIANA)		IN THE ELKHART
	SS:	SUPERIOR COURT
COUNTY OF ELKHART)		1980 TERM
RICHARD C. ADAMS	)	CAUSE NO.
VS	)	50004
ALFRED JEAN M. MOORE AND	)	
MENNONITE BOARD OF MISSIONS)		

SUMMARY JUDGMENT

Cause coming on for hearing on motion for summary judgment filed by the plaintiff and the defendant.

Court having heard the evidence and arguments of counsel, and both counsel having informed the Court that there is, in fact, no dispute as to any material facts, Court now finds that there is no genuine issue as to any material facts and further finds that the law is with the plaintiff based on the case of First Savings & Loan Association of Central Indiana v. Furnish (1977), 367 N.E. 2d 596, and that the plaintiff is entitled to summary judgment granting the relief sought in the complaint as a matter of law.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the plaintiff and against the defendant on the motion for summary judgment and the title to the real estate described in the complaint be quieted in

the title in the plaintiff and that the plaintiff shall own said real estate free and clear of any claim by the defendant.

Tax costs to the defendant. JUDGMENT.

(s) Donald W. Jones
Donald W. Jones, Judge
ELKHART SUPERIOR COURT

Dated this 26th day of February, 1980.

IN THE
COURT OF APPEALS OF INDIANA

MENNONITE BOARD OF MISSIONS, INC., Defendant-Appellant, v. RICHARD C. ADAMS, Plaintiff-Appellee.	))))))	No. 3-780 A 217

APPEAL FROM ELKHART SUPERIOR COURT
Honorable Donald W. Jones, Judge
50004

STATON, J.

The Mennonite Board of Missions, Inc. (MBM) appeals an adverse summary judgment quieting title to certain real property in Richard C. Adams. MBM urges the following issues for our review:

(1) Whether the pre-tax sale notice provisions under the tax sale statutes[1] meet constitutional due process standards;[2]

[1]"Tax sale statutes" are used to collectively refer to those statutes controlling the sale of real property for failure to pay taxes, Ind. Code §§6-1.1-24-1 to -12 (1976 & Supp. 1980); and, those statutes controlling either the redemption of or the quiet title action to that property, Ind. Code §§ 6-1.1-25-1 to -19 (1976 & Supp. 1980).

[2]MBM also challenges the correctness of the decision in First Federal Savings

(2) Whether notice of the right of redemption under the tax sale statutes is sufficient to meet constitutional due process standards; and,

(3) Whether the discrimination between owners of mortgagees in notification of the tax sale is violative of constitutional equal protection standards.

The trial court upheld the tax sale statutes against these constitutional challenges and we affirm that decision.

In 1973 Alfred Jean Moore executed a mortgage upon her real property in favor of MBM to secure an indebtedness of $14,000. Under the terms of the mortgage, Moore was obligated to pay the property taxes, but after 1974, she failed to pay them. The property was sold to Adams at a tax sale on August 8, 1977 for $1,167.75. On August 10, 1979, Adams received a tax deed to the property which he recorded on August 14, 1979. On August 16, 1979, MBM first learned of the above events when Moore informed MBM that "she was in trouble." Throughout the above period of time Moore had continued to make her mortgage payments, but still owed $8,237.19 on the indebtedness.

(Footnote continued from preceding page) and Loan Association of Central Indiana v. Furnish (1977), __Ind. App.__, 367 N.E.2d 596, which addressed this same issue; and whether, if correctly decided, Furnish controls the outcome in this case.

On November 1, 1979, Adams filed an action to quiet title naming MBM and Moore as defendants.[3] Moore failed to contest the action and Adams was granted a default judgment. On February 26, 1980, summary judgment was granted quieting title in Adams and all liens, including that of MBM's mortgage interest, against the property were extinguished.[4]

We note at the outset that MBM must meet a severe test in challenging the constitutionality of the tax sale statutes. The challenging party has the burden to present a strong and clear case establishing the unconstitutionality of the statutes. The court reviewing such challenge not only presumes the statutes are constitutional, but accords the statutes all reasonable presumptions supporting their validity. Short v. Texaco (1980) __Ind.__, 406 N.E.2d 625, appeal pending, 101 S.Ct. 1693; Johnson v. St. Vincent Hospital, Inc. (1980), __Ind.__, 404 N.E.2d 585. As recently stated by our Supreme Court in Short, supra:

> "Courts of this state and nation have always given due regard to constitutional constraints upon their authority to void statutes. In doing

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[3]MBM was a necessary party-defendant under IC 6-1.1-25-14.

[4]Under IC 6-1.1-25-4, the execution of the tax deed vests in the grantee a fee simple absolute estate free and clear of all liens. The quiet title action may be instituted to finalize that action, but the tax deed becomes absolute after one year. IC 6-1.1-25-17.

so in Noel v. Ewing, (1857) 9 Ind. 37, we said:

> 'It is due from the judiciary to sustain and reconcile their enactments, if possible. We will not lightly conclude that the lawmaking power has either ignorantly or wilfully violated the constitution. To justify the Courts in declaring an act void, it must be clearly subversive of that instrument. (Citations omitted.)
>
> 'They who claim that the legislature has, in this particular, transcended its constitutional power, should be prepared to make a strong and clear case. All doubts must fall in favor of the validity of the law.' 9 Ind. at 43.

"We reaffirm again now in this case our adherence to this vital principle." (parentheses original)

406 N.E. 2d at 627-28.

I.
Pre-tax Sale Notice

MBM first challenges the notice requirements under the tax sale statutes. Specifically, MBM alleges that the notice to mortgagees of the sale of property for delinquent taxes does not meet due process standards. This identical issue was addressed by the Second District of this Court in First Savings and Loan Association of Central Indiana v. Furnish (1977), __Ind.App.__, 367 N.E.2d 596.

The Furnish Court found the notice to mortgagees sufficient and upheld the constitutionality of the tax sale statutes. There has been no significant change in this area of the law since the Furnish decision. We are in agreement with the result reached therein and find no need to further examine that issue.

MBM attempts to distinguish the facts of the present case from those facts underlying the Furnish decision. The only significant factual distinction is that the mortgagee in the Furnish case had actual knowledge, unlike MBM in the present case, of the tax sale after the sale but during the redemption period. The Furnish Court specifically stated, however, that the issue addressed was "whether due process entitles a mortgagee to actual notice of a tax sale rather than constructive notice (publication)." (parentheses original) 367 N.E.2d at 599. Further, our examination of the Furnish decision reveals that the mortgagee's actual knowledge of the sale after the date of the sale was not determinative of the outcome of that issue. Notice after the date of

the tax sale, whether actual or constructive, was not relevant to the issue addressed. Therefore, MBM's attempt to distinguish Furnish upon the facts is without merit.[5]

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[5]MBM points out a further factual distinction between the Furnish case and the present case. In Furnish, the mortgagor became delinquent in the payment of the mortgage principal as well as in the payment of the real estate taxes. In the present case, the mortgagor was always current in her monthly mortgage payments. Assumedly, though not specifically argued, MBM is again asserting that the mortgagee in Furnish had actual knowledge of the tax sale. As stated above, notice after the sale is not pertinent to the issue presented in Furnish or in this case. Additionally, whether the mortgagee obtains knowledge of the tax sale by means other than notice given under the tax sale statutes is not pertinent to the issue presented. Again, the issue presented in Furnish and in this case is whether the tax sale statutes give sufficient notice. Whether the mortgagee obtains actual knowledge of the tax sale by means other than the operation of the statutes is not pertinent. The mortgagee in Furnish may well have obtained its actual knowledge of the tax sale when pursuing the reason for the delinquency of the mortgage payments. If so, such knowledge was obtained my means other than the operation of the tax sale statutes and is, therefore, not pertinent to the issue presented.

II.
Notice of Redemption Right

MBM makes a second challenge to the constitutionality of the notice provisions under the tax sale statutes. MBM alleges that the fact the statutes provide no notice to the mortgagee of the right of redemption[6] after the tax sale violates due process standards. However, MBM cites to no authority, and we find none, for the proposition that the State must provide notice to interested parties of their right of redemption.

We find the recent case of our Supreme Court, Short, supra, controlling. In Short, the Court addressed a constitutional challenge to the Mineral Lapse Act (MLA), Ind. Code §§ 32-5-11-1 to -8 (Supp.1980). The MLA terminates interests in mineral rights not "used"[7] for a twenty year period. The termination occurs without notice, other than the enactment of the MLA, to the owner of the interest. Upon enactment, the MLA granted mineral interest owners a two year period of grace to effect a qualifying "use" to preserve the interest. Addressing a challenge that

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[6]The tax sale statutes provide for the possible redemption of the tax sale property. IC 6-1.1-25-1 to -19. Any party with an "interest" in the property may redeem the property. Id. at -1. The mortgagee clearly falls within the category of interested parties with the right of redemption. Furnish, supra, 367 N.E.2d at 600.

[7]IC 32-5-11-3; Short, supra, 406 N.E. 2d at 627.

the MLA provided insufficient notice to interest owners under due process standards, Justice DeBruler wrote:

> "Prior to any extinguishment the owner of an interest will have had notice by reason of the enactment itself of the conditions which would give rise to an extinguishment and at a minimum a two year opportunity to prevent those conditions from occurring . . . . Anderson National Bank v. Luckett, (1944) 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692 . . . ."

406 N.E.2d at 629.

As in Short, all mortgagees have notice of the right of redemption by the enactment of the tax sale statutes and a grace period of two years granted by those statutes to protect their interests. Under the controlling precedent of Short, we find MBM's constitutional challenge to be insufficient.

III.
Equal Protection of Notice

And finally, MBM challenges the statutory scheme of classification regarding notice requirements under the tax sale statutes. MBM alleges the discrimination between owners and mortgagees is violative of the equal protection requirements of the United States and Indiana constitutions.[8]

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[8]Equal protection under these federal and state constitutions are coextensive.

In addressing an equal protection challenge:

> "If neither a fundamental right nor a suspect classification is involved, the standard of review is that the classification not be arbitrary or unreasonable. . .and that a 'fair and substantial' relationship exist between the classification and the purpose of the legislation creating it. . ."

Sidle v. Majors (1976), 264 Ind. 206, 210, 341 N.E.2d 763, 767. The classification scheme here under review does not involve either a fundamental right or a suspect class. See, Massachusetts Board of Retirement v. Murgia (1976), 427 U.S. 307, 312, 96 S.Ct. 2562, 2566, 49 L.Ed. 2d 520.

Under the tax sale statutes, notice of the tax sale is posted and published. IC 6-1.1-24-3. Only owners of the real property upon which the delinquent taxes are owing receive notice by mail. IC 6-1.1-24-4. We find that statutory scheme to be reasonable and to have a fair and substantial relationship to the purpose of the legislation.

First, this classification may well evidence the Legislature's concern with the mortgagor-homeowner. The mortgage has traditionally been the financial vehicle upon which the ownership of a home has been pursued. And, traditionally, the law

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(Footnote continued from preceding page) Huff v. White Motor Corp. (7th Cir. 1979), 609 F.2d 286; Sidle v. Majors (1976), 264 Ind. 206, 341 N.E.2d 763.

has ensconced the rights of homeowners in the safety of significant procedural protections. See, e.g., Walker v. City of Hutchinson (1956), 352 U.S. 112, 77 S.Ct. 200; Fritz v. Board of Trustees of Town of Clermont (1969), 253 Ind. 202, 252 N.E.2d 567. This statutory scheme recognizes both the financial and protective traditions of this society.

Secondly, the obvious underlying purpose of the tax sale statutes is to insure the collection of delinquent taxes. In achieving that purpose, the Legislature has provided for notice to all interested parties by means of posting and publication. This is in addition to the common knowledge that real property taxes are due and owing upon an annual basis and that property may be sold if not paid. The classification scheme here challenged merely provides for a more certain form of notice to the real property owners. Those individuals, whether homeowners, as in the present case, or business owners as in the Furnish case, or any other type of owners, were deemed by the Legislature to be entitled to a greater form of notice than society as a whole. We cannot say that is an arbitrary or unreasonable classification. Neither can we say that the overall notice scheme of the tax sale statutes does not have a fair and substantial relationship to the purpose of collecting delinquent taxes.

And finally, there is a very real and substantial reason for the differing treatment of owners and mortgagees. As stated by the Court in Furnish:

> "It is understandable why actual notice has not been

> extended to mortgagees. Most mortgagees are in the business of lending money, and as professional money lenders prudence requires them to be aware of conditions involving their collateral. Normally, they can be expected to protect their interest by keeping records of the mortgagor's discharge of his obligations, such as payment of taxes, insurance, principal and interest installments."

367 N.E.2d at 601.[9]

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[9]Though MBM may not be a professional money lender, it freely chose to enter an area of sophisticated financial investment and thereby necessarily chose to incur the risk inherent therein. The State cannot reasonably be expected to assume the risk of its citizens' business ventures. MBM could have protected itself in one of at least three ways, in addition to the notice by the State. First a condition of the mortgage could have required a copy of the paid tax assessment be given to MBM within a given time after the taxes were due. Second, the mortgage could have provided that a portion of each payment be put in escrow and MBM then pay the tax assessment. Or third, MBM could have checked the public records to determine whether the tax assessment had been paid. We also note that after January 1, 1981, the mortgagee may be provided with notice by mail of any property subject to a tax sale by filing the appropriate form and paying a minimal fee. IC 6-1.1-24-4.2.

Finding no constitutional infirmity, we affirm the trial court.

HOFFMAN, P.J., and GARRARD, J., Concur.

FIRST SAVINGS AND LOAN ASSOCIATION
OF CENTRAL INDIANA,
Appellant (Plaintiff below),
v.
Alfred E. FURNISH and D. Louise Furnish,
Appellees (Defendants below).

No. 2-476A162.
Court of Appeals of Indiana,
Second District.

Sept. 19, 1977.

CASE SUMMARY

BUCHANAN, Judge.

Plaintiff-appellant First Savings & Loan Association of Central Indiana (First Savings), as a mortgage lienholder, appeals from the granting of Summary Judgment in favor of Appellees, Alfred E. and D. Louise Furnish (Furnish) quieting title in Furnish as tax sale purchaser, claiming the judgment was contrary to the evidence and pre-sale notice by publication was in violation of the Due Process Clauses of the United States and Indiana Constitutions.[1]

We affirm.

FACTS

The facts and evidence most favorable to the judgment of the trial court are:

On August 12, 1968, Donmar Realty Corporation (Donmar) executed a mortgage

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[1]U.S. Const. amend. XIV, § 1; Ind. Const. art. 1, §12.

on land it owned in Grant County, Indiana, in favor of Twin City State Bank (Twin City), which then recorded the mortgage in the Recorder's office of Grant County and subsequently assigned it to First Savings of Madison County, Indiana, on September 13, 1968. First Savings recorded the assignment in Grant County on October 2, 1968.[2]

Some time after the assignment, Donmar, the mortgagor, defaulted in its principal payments and also became delinquent in payment of real estate taxes. As a result the land, on August 14, 1972, was sold at a tax sale to Furnish after notice of the impending sale was sent to Donmar, the owner, by certified mail.[3] Notice was also posted on the Grant County Courthouse and, pursuant to statute,[4] published in a newspaper of local circulation in Grant

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[2]The mortgage assignment, part of a blanket assignment recorded in Mortgage Record 68, page 1616, reads in part:

ASSIGNMENT OF MORTGAGES

For value received, the undersigned Twin City State Bank, hereby sells, transfers, acts over and assigns to the First Savings and Loan Association of Madison County, its entire right, title, and interest in and to each and all of the following described bona fide mortgages. . ..

[3]Pursuant to IC 6-1-56-1 & 2.

[4]Id.

County for three consecutive weeks.[5] No notice was sent to First Savings.

The record indicates First Savings did not have actual knowledge of the real estate tax delinquency before the tax sale took place, but it is undisputed it had knowledge thereof during the period of redemption. In fact, on November 27, 1972, about three and one-half months after the sale, First Savings filed in the Grant Circuit Court an action to foreclose the mortgage naming Donmar (the original owner), Twin City (original mortgagee), and Furnish (tax sale buyer) as Defendants.

First Savings did not attempt to redeem the land pursuant to the right given lienholders by the statute then in effect,[6] and title was conveyed[7] to Furnish on August 16, 1974.

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[5]The record does not disclose the name of the newspaper in which the notice was published, the dates of publication, nor the wording of the publication.

[6]IC 6-1-57-1 allowed a lienholder to redeem by paying to the County Treasurer an amount as provided by IC 6-1-57-2; which read:

Amount required for redemption.--The amount required for redemption shall be as follows:
1. If redeemed after six (6) months and within one (1) year from the date of sale, the purchase price named in the certificate of sale together with ten percent (10%) of such amount in addition; or

After the action was venued to Miami County, Indiana, on March 9, 1973, and, following the subsequent failure by First Savings to redeem, Furnish filed, on December 24, 1974, a counter-claim against

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(Footnotes continued from preceding page)
2. If redeemed after six (6) months and within one (1) year from the date of sale, the purchase price named in the certificate of sale, together with fifteen percent (15%) of such amount in addition; or
3. If redeemed after one (1) year from date of sale, the purchase price named in the certificate of sale, together with twenty-five percent (25%) of such amount in addition.

In addition to the above, the amount required for redemption shall include all taxes and special assessments charged to the real property subsequent to those for which it was sold which have been paid by the purchaser, together with six percent (6%) interest on the taxes and special assessment. At any time after redemption, upon presentation and surrender of this certificate of sale to the County Auditor, said Auditor shall issue a warrant on the County Treasurer to pay the person surrendering the certificate the amount received by the Treasurer for redemption. The County Auditor shall endorse the certificate and preserve it as a public record. In case the certificate of sale is lost, the payment may be made to the proper person in the manner herein provided upon the County Auditor being fully satisfied by due proof of the existence of such certificate. (Acts 1963, ch. 280, § 702, p. 426.)

[7]IC 6-1-57-3.

First Savings to quiet title to the real estate. On October 8, 1975, First Savings filed a Consolidated Motion for Declaratory Judgment[8] against the counter-claim of Furnish. Furnish responded by an oral Motion for Summary Judgment[9] and the trial court granted Furnish's motion.

This appeal followed.

ISSUES

Two issues[10] are presented for our disposition:

(1) Does First Savings have standing to raise lack of due process (constructive notice only) under the 14th Amendment to the United States Constitution and art. 1, § 12 to the Indiana Constitution?

(2) Does failure to give a mortgagee actual notice of a tax sale constitute a denial of due process?

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[8]Ind. Rules Procedure, Trial Rule 57.

[9]TR 56. The trial court had, on July 3, 1975, entered Summary Judgment agaist Twin City for First Savings, holding that the assignment of the promissory note, and the mortgage securing it, to First Savings had been made with recourse.

[10]As First Savings appeals from a negative judgment, no error is presented by its assertion that the judgment was contrary to the evidence. Smitley v. Egley (1973), 156 Ind.App. 10, 294 N.E.2d 640; and cases cited herein.

PARTIES CONTENTIONS--First Savings argues it has standing to assert lack of due process becasue it has suffered harm, and further, that the landmark decision in Mullane v. Hanover Bank & Trust Co.[11] requires that a mortgagee whose lien is recorded must be given actual notice prior to the sale of the mortgaged land for tax delinquency.

Furnish responds that First Savings lacks standing to raise the constitutional issue as First Savings had actual knowledge of the sale within the redemption period and therefore was not harmed. Alternatively, Furnish argues that the statute pertaining to notice[12] is reasonably calculated to apprise any interested party of the pendency of the sale, thus satisfying the requirements of due process.

DECISION

ISSUE ONE

CONCLUSION--First Savings has standing to raise the constitutional question of lack of due process.

A threshold question is raised by Furnish's assertion that First Savings has no right to raise the constitutional question inasmuch as it was not harmed because the property could have been redeemed during the period of redemption.

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[11](1950), 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865.

[12]Note 4 supra.

It is true that standing to raise a constitutional question is determined by the existence of harm which occurred because of the operation of the statute or act which is asserted as unconstitutional. Board of Commissioners of Howard County v. Kokomo City Plan Commission (1975), Ind., 330 N.E.2d 92; Lamb v. State (1975), Ind., 325 N.E.2d 180; State v. Clark (1966), 247 Ind. 490, 217 N.E.2d 588; Wells v. State (1976), Ind.App., 351 N.E.2d 43.

Harm is demonstrated, says First Savings, and we agree, because by redeeming after the sale a greater sum of money would have to be paid, consisting of penalties and interest.[13]

That such payments of penalties and interest constitute harm is consistent with the case law on this subject. Johnson v. United States, 422 F.Supp. 958 (N.D.Ind.1976); Cottongim v. Congleton (1964), 245 Ind. 387, 199 N.E.2d 96; Pennington v. Stewart (1937), 212 Ind. 553, 10 N.E.2d 619. And further, a determination of the constitutional question is necessary to a complete determination of the rights of the parties. Shigley v. Whitlock, supra; Garcia v. Slabaugh, supra; Saloom v. Holder, supra note 13.

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[13]See IC 6-1-57-2, supra note 6. Further, resolution of a constitutional issue requires a finding that reaching the constitutional question is absolutely necessary to a determination of the case. Shigley v. Whitlock (1974), Ind. App., 310 N.E.2d 93; Garcia v. Slabaugh (1974), Ind. App., 308 N.E.2d 714; Saloom v. Holder (1973), Ind.App., 304 N.E.2d 217.

ISSUE TWO

CONCLUSION--Due process does not require that a mortgage be given actual notice of a tax sale.

The precise question is whether due process entitles a mortgagee to actual notice if a tax sale rather than constructive notice (publication).

The trial court concluded, properly, that Indiana statutes relating to the sale of tax delinquent real estate contemplate a mortgagee only receiving constructive notice (posting and publication).

The general notice statute provides that notice be given by publication and posting without reference to whom it shall apply:

> To the list of real property described in §§ 601 [6-1-56-1] shall be attached a notice stating that each parcel of real property listed will be sold at public auction to the highest bidder; that said sales shall be an amount not less than the sum of delinquent special assessments and taxes (whether or not delinquent for more than fifteen months), taxes and special assessments due and payable in the year of the sale (whether or not delinquent), penalties s which may be due thereon, or due from the owner thereof with respect thereto, and five dollars [$5.00] costs; that said sale shall be conducted at a designated place in the courthouse or on the courthouse grounds; and that said sale shall be commenced at 10:00 A.M., on the second Monday in August next thereafter and

> continue from day to day until all the real property is sold.
> The County Auditor shall cause a copy of the aforesaid notice to be posted in a public place of posting in the courthouse at least three [3] weeks before the date of sale, and shall also give notice by publication once each week for three [3] consecutive weeks before such sale. The expense of such printing shall be paid out of the County general fund without prior appropriation therefor.
> The County Auditor shall, on or before the day of the sale, attach a copy of such notice to the list required by § 601 and certify on this record the manner and length of time the notice was printed and posted. [Acts 1963, ch. 280, § 602, p. 426.] (Emphasis supplied) (hereinafter referred to as the general notice statute). IC 6-1-56-2 [64-2256].

But significantly the very next section specifically requires actual notice be given by certified mail to the "owner or owners." No reference is made to any other interested person:

> 6-1-56-3 [64-2257]. Notice of sale to owner.--In addition to the notice required to be given by §§ 602 [6-1-56-2], the County Auditor shall send a notice of such sale to the owner or owners of such real property listed for sale for delinquent taxes or special assessments, at the last known address by certified mail at least 21 days prior to the date set for the sale. Such notice shall be in a form prescribed by the State Board of Accounts. The County Auditor shall, on

> or before the day of sale, certify on his record that such notice was mailed as herein provided. [Acts 1963, ch. 280, § 603, p. 426]. (Emphasis supplied) (hereinafter referred to as the special notice statute).

And then the statutory scheme of sale and redemption of tax delinquent real estate allows a lienholder, among other persons having an interest in real estate, the right to redeem:

> 6-1-57-1 [64-2276]. Redemption.--The owner, occupant, lienholder or any other person having any interest in real property sold pursuant to Article VI [6-1-56-1-6--6-1-56-14] of this act may redeem the property sold at any time before deed is issued therefor by paying to the county treasurer the amount required by this article [6-1-57-1--6-1-57-16] for redemption. [Acts 1963, ch. 280, § 701, p. 426]. (Emphasis supplied) (hereinafter referred to as the redemption statute.)

Giving the words of these three statutes their "plain or ordinary and usual sense" as we are required to do, the plain implication is that only an owner of real estate is entitled to the actual notice of the special notice statute. IC 1-1-4-1; State ex rel. Bynum v. LaPorte Superior Court No. One (1973), 259 Ind. 647, 291 N.E.2d 355; Sutto v. Board of Medical Registration & Examination (1962), 242 Ind. 556, 180 N.E.2d 533; State v. Bress (1976), Ind.App., 349 N.E.2d 229; Jenkins v. Stotts (1976), Ind.App., 348 N.E.2d 57; Sekerez v. Youngstown Sheet & Tube Co. (1975), Ind.App., 337 N.E.2d 521.

The mortgagee is not forgotten; he is given the right of redemption, indicating the legislature considered the mortgagee's interest sufficient to be entitled only to redemption rights.

Considering the general notice section and the special notice section in parimateria so as to give effect to each, New York Central R. Co. v. Public Service Comm. of Indiana (1957), 237 Ind. 544, 147 N.E.2d 547; Porter Memorial Hospital v. Harvey (1972), 151 Ind.App. 299, 279 N.E.2d 583, the obvious intent of the legislature is that only "owners" are entitled to actual notice. That a mortgagee is not an owner is well established by Indiana law.[14]

And so First Savings is confronted with a series of statutes which only provide for actual notice to "owners" and constructive notice to all others. But, says First Savings, failure to provide actual notice to a mortgagee of a tax sale is deprivation of property without due process.

Thus, having successfully leaped the hurdle of standing, the next hurdle, demonstration of lack of due process,

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[14]A mortgage is a lien, a mere security for a debt. The mortgagee has no title to the land mortgaged. Indiana Department of Revenue v. Colpaert Realty Corp. (1952), 231 Ind. 463, 109 N.E.2d 415. He is not an "owner" unless he is in possession of the mortgaged land and, as such, is not entitled to notice by personal service. Baldwin v. Moroney (1910), 173 Ind. 574, 91 N.E. 3.

remains in the constitutional obstacle course.

Every statute enacted by the Legislature of this state is clothed with the presumption of constitutionality. This presumption continues until the contrary is clearly shown. Sidle v. Majors (1976), Ind., 341 N.E.2d 763. To overcome this presumption the party attacking the statute must make the constitutional defects readily apparent. Hanley v. State (1955), 234 Ind. 326, 126 N.E.2d 879. In Indiana, the standard of persuasion applied is "beyond a reasonable doubt." Clark, supra: Vale v. Gary National Bank, 406 F.2d 39 (7th Cir. 1969).

First Savings leans hard on the landmark case of Mullane v. Hanover Bank & Trust Co.,[15] and particularly this language:

> As to known present beneficiaries of known place of residence, however, notice by publication stands on a different footing. Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability, notice must be such as is reasonably calculated to reach interested parties. Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency. 339 U.S. at 318, 70 S.Ct. at 659.

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[15] Note 11 supra.

First Savings argues that "interested parties" does not distinguish between owners and non-owners in determining the type of notice given, i.e. "interested parties."

However, Mullane concerned itself with notice to owners and beneficiaries of the trust whose names and addresses were known.

Subsequent cases decided by the United States Supreme Court considering the adequacy of notice by publication in various types of situations have been restricted to owners of the affected property. See Schroeder v. City of New York (1962), 371 U.S. 208, 83 S.Ct. 279, 9 L.Ed.2d 255; Walker v. City of Hutchinson (1956), 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178; Wisconsin Electric Power Co. v. City of Milwaukee (1956), 352 U.S. 948, 77 S.Ct. 324, 1 L.Ed.2d 241; Ridenhour v. County of Bay (1962), 366 Mich. 225, 114 N.W.2d 172; Meadowbrook Manor, Inc., v. City of St. Louis Park (1960), 258 Minn. 266, 104 N.W.2d 540.

After Mullane, Indiana, like other states, amended existing statutes to conform to this basic due process requirement. But the principal of actual notice has never been extended to any class other than "owners" in Indiana.

Fritz v. Board of Trustees of Town of Clermont (1969), 253 Ind. 202, 252 N.E.2d 567, is in keeping with this limitation. It held that property owners were entitled to actual notice before special assess-

ments could be effective. Admittedly, the court stated:

> We do say, however, that where personal notice is reasonably possible under the circumstances, the authorities are required to take steps which are reasonably calculated to give actual notice to these persons whose property is specifically affected in order to allow them to remonstrate and object within a reasonable period of time. 253 Ind. at 211, 252 N.E.2d at 571, 572. (Emphasis supplied)

That Fritz should not be interpreted so broadly as to include lienholders in addition to owners is this wording:

> When, however, the proceedings reach the point where it affects specific pieces of property owned by specific individuals the intentions of the public authority to seize or take an interest or make an assessment against such property should be made known to the individual affected by means which are reasonably calculated to give such person actual notice. 253 Ind. at 211, 252 N.E.2d at 571. (Emphasis supplied)

Reading the opinion as a whole we can discover no intent to include all interested persons within the actual notice requirement.

Our research discloses only one case extending Mullane to mortgagees. Laz v. Southwestern Land Co. (1964), 97 Ariz. 69, 397 P.2d 52. It is not persuasive, being founded largely on vague and general statements of public policy.

It is understandable why actual notice has not been extended to mortgagees. Most mortgagees are in the business of lending money, and as professional money lenders prudence requires them to be aware of conditions involving their collateral. Normally they can be expected to protect their interest by keeping records of the mortgagor's discharge of his obligations, such as payment of taxes, insurance, principal and interest installments.

Also, we are aware that there is a vintage Indiana case, Baldwin v. Moroney (1910), 173 Ind. 574, 91 N.E. 3, which specifically categorizes a mortgagee as a "non-owner" unless he is in possession of the real estate.

In sum, First Savings presents no applicable authority overcoming the presumption of constitutionality of the statutes in question, and thereby founders in the constitutional obstacle course.

Judgment affirmed.

WHITE and LYBROOK, JJ., concur.

IN THE
SUPREME COURT OF INDIANA
NO. 3-780A217

MENNONITE BOARD OF MISSIONS, Defendant-Appellant	)	APPEAL FROM THE ELKHART SUPERIOR COURT
vs.	)	
RICHARD C. ADAMS, Plaintiff-Appellee	)	The Honorable Donald W. Jones, Judge

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Mennonite Board of Missions, the Appellant above named, hereby appeals to the Supreme Court of the United States from the denial of Appellant's Petition for Transfer by the Indiana Supreme Court on April 13, 1982, which said denial of transfer affirms the decision by the Indiana Court of Appeals rendered on October 29, 1981.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

The Court of Appeals of Indiana ruled that the notice provisions of the Indiana Tax Sales Statutes were not violative of the Due Process Clause of the United States Constitution. Appellant has at all times claimed that the foregoing statutes are unconstitutional as violative of the notice required under Due Process, as applied by Appellant. The final judgment

from which this appeal is taken is in favor of the validity of said statutes.

May 25, 1982.

SLABAUGH, COSENTINO,
WALKER & SHEWMAKER

BY: (s)William J. Cohen

William J. Cohen
115 W. Lexington Ave.
P. O. Box 1866
Elkhart, IN 46515
(219) 295-6210

PROOF OF SERVICE

I, William J. Cohen, counsel for the Appellants, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 25th day of May, 1982, I served counsel for the Appellee, Robert W. Miller, 412 St. Joseph Valley Bank Building, Elkhart, Indiana 46516, and upon Linley E. Pearson, Attorney General for the State of Indiana, 219 State House, Indianapolis, Indiana 46204, by placing a copy of the foregoing Notice of Appeal in the United States mail, first-class postage prepaid.

(s)William J. Cohen
WILLIAM J. COHEN

VERIFIED PROOF OF SERVICE OF FILING
A PETITION FOR JURISDICTIONAL STATEMENT

I, WILLIAM J. COHEN, being first duly sworn upon my oath, allege and say:

1. That I am a member of the Bar of the United States Supreme Court.

2. That on the 25 day of June, 1982, I deposited at the United States Post Office, Elkhart, Indiana, first class postage prepaid and properly addressed to the Clerk of this Court, forty (40) copies of Appellant's Petition for Jurisdictional Statement within the time allowed for filing.

3. That, in addition, I deposited at the United States Post Office, Elkhart, Indiana, first class postage prepaid and properly addressed to Robert W. Miller, counsel for the Appellee, at his address, 412 St. Joseph Valley Bank Building, Elkhart, Indiana 46516, three (3) copies of Appellant's Petition for Jurisdictional Statement.

4. That, in addition, I deposited at the United States Post Office, Elkhart, Indiana, first class postage prepaid and property addressed to Linley E. Pearson, Attorney General for the State of Indiana, at his address, 219 State House,

Indianapolis, Indiana 46204, three (3) copies of Appellant's Petition for Jurisdictional Statement.

William J. Cohen

William J. Cohen

STATE OF INDIANA)

) SS:

COUNTY OF ELKHART)

Subscribed and sworn to before me, this 28th day of June, 1982.

Suzanne E. Rupchock

Suzanne E. Rupchock, Notary Public
Residing in St. Joseph County, Indiana

My Commission Expires:
April 26, 1983